

**ASSEMBLY BILL**

**No. 1143**

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**Introduced by Assembly Member Skinner**

February 22, 2013

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An act to amend Sections 23304.1 and 23305.5 of the Revenue and Taxation Code, relating to taxation, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

AB 1143, as introduced, Skinner. Tax administration: suspension or forfeiture: limited liability companies.

Existing law provides that specified limited liability companies and corporations that are suspended or forfeited for failure to file a tax return or for failure to pay delinquent taxes, penalties, or interest are subject to specified consequences, including contract voidability for the period in which the entity is suspended or forfeited.

This bill would subject foreign nonregistered limited liability companies to contract voidability where the foreign nonregistered limited liability company is subject to suspension or forfeiture for failure to file a tax return or for failure to pay delinquent taxes, penalties, or interest.

This bill would declare that it is to take effect immediately as an urgency statute.

Vote:  $\frac{2}{3}$ . Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

SECTION 1. Section 23304.1 of the Revenue and Taxation Code is amended to read:

23304.1. (a) Every contract made in this state by a taxpayer during the time that the taxpayer's ~~corporate~~ powers, rights, and privileges are suspended or forfeited pursuant to Section 23301, 23301.5, or 23775 shall, subject to Section 23304.5, be voidable at the instance of any party to the contract other than the taxpayer.

(b) If a foreign taxpayer that neither is qualified to do business nor has ~~a corporate~~ *an* account number from the Franchise Tax Board, fails to file a tax return required under this part, any contract made in this state by that taxpayer during the applicable period specified in subdivision (c) shall, subject to Section 23304.5, be voidable at the instance of any party to the contract other than the taxpayer.

(c) (1) For purposes of subdivision (b), the applicable period shall be the period beginning on January 1, 1991, or the first day of the taxable year for which the taxpayer has failed to file a return, whichever is later, and ending on the earlier of the date the taxpayer qualified to do business in this state or the date the taxpayer obtained ~~a corporate~~ *an* account number from the Franchise Tax Board.

(2) *With regard to a limited liability company, the applicable period shall be the period beginning on January 1, 2014, or the first day of the taxable year for which the taxpayer has failed to file a return, whichever is later.*

(d) If a taxpayer fails to file a tax return required under this part, to pay any tax or other amount owing to the Franchise Tax Board under this part or to file any statement or return required under Section 23772 or 23774, within 60 days after the Franchise Tax Board mails a written demand therefor, any contract made in this state by the taxpayer during the period beginning at the end of the 60-day demand period and ending on the date relief is granted under Section 23305.1, or the date the taxpayer qualifies to do business in this state, whichever is earlier, shall be voidable at the instance of any party to the contract other than the taxpayer. This subdivision shall apply only to a taxpayer if the taxpayer has ~~a corporate~~ *an* account number from the Franchise Tax Board, but has not qualified to do business under ~~Section 2105~~ of the

Corporations Code. In the case of a taxpayer that has not complied with the 60-day demand, the taxpayer's name, Franchise Tax Board corporate account number, date of the demand, date of the first day after the end of the 60-day demand period, and the fact that the taxpayer did not within that period pay the tax or other amount or file the statement or return, as the case may be, shall be a matter of public record.

SEC. 2. Section 23305.5 of the Revenue and Taxation Code is amended to read:

23305.5. ~~(a) For the purposes of this article, "taxpayer" shall include any limited liability company, foreign or domestic, that is organized in this state or registered with the Secretary of State.~~  
*article:*

(a) *"Taxpayer" means either:*

(1) *A corporation subject to tax under this chapter.*

(2) *A business entity organized under a statute or law, or a state or a federally recognized Indian Tribe, or another jurisdiction, if the statute or law describes or refers to the entity as a limited liability company or if regulations of the Franchise Tax Board identify a business entity organized under the laws of a foreign country as a limited liability company.*

~~(b) For purposes of this article, in the case of~~ *With regard to a* limited liability company:

(1) *"Articles of incorporation" shall include a limited liability company's articles of organization.*

(2) *"Tax" shall include the tax and fee imposed by Sections 17941 and 17942, or former Sections 23091 and 23092, respectively.*

SEC. 3. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to ensure that all entities doing business in California are treated equally under the Rev and Tax Code, it is necessary that this act take effect immediately.